

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ROBERT ELIAS VENTURA,

No. C 08-01708 SBA (PR)

12 Petitioner,

**ORDER DENYING PETITIONER'S**  
**MOTION FOR RECONSIDERATION**

13 v.

14 DARREL ADAMS, Warden,

15 Respondent.

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17 Before the Court is Petitioner's motion for reconsideration of the Court's Order denying  
18 appointment of counsel.19 Rule 60(b) provides for reconsideration only upon a showing of: (1) mistake, inadvertence,  
20 surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have  
21 been discovered before the court's decision; (3) fraud by the adverse party; (4) a void judgment; (5)  
22 a satisfied or discharged judgment; or (6) any other reason justifying relief. See Fed. R. Civ. P.  
23 60(b). Subparagraph (6) requires a showing that the grounds justifying relief are extraordinary.  
24 Mere dissatisfaction with the Court's order, or belief that the Court is wrong in its decision, are not  
25 grounds for relief under subparagraph (6) or any other provision of Rule 60(b). "[T]he major  
26 grounds that justify reconsideration involve an intervening change of controlling law, the  
27 availability of new evidence, or the need to correct a clear error or prevent manifest injustice."  
28

Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting United States v. Desert Gold Mining Co., 433 F.2d 713, 715 (9th Cir. 1970)).

Petitioner presents no grounds that warrant reconsideration. As explained in the Court's Order denying appointment of counsel, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987). While 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the exception rather than the rule. Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations, see Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th Cir. 1965), cert. denied, 382 U.S. 996 (1966), and whenever an evidentiary hearing is required, see Rule 8(c) of the Rules Governing Section 2254 Cases; United States v. Duarte-Higareda, 68 F.3d 369, 370 (9th Cir. 1995); Bashor, 730 F.2d at 1234. At this early stage of the proceedings the Court is unable to determine whether the appointment of counsel is mandated for Petitioner. Accordingly, Petitioner's motion for reconsideration is DENIED because appointment of counsel is not necessary at this time.

This Order terminates Docket no. 10.

IT IS SO ORDERED.

Dated: 7/17/08

Saundra B Armstrong  
SAUNDRA BROWN ARMSTRONG  
UNITED STATES DISTRICT JUDGE

1           UNITED STATES DISTRICT COURT  
2           FOR THE  
3           NORTHERN DISTRICT OF CALIFORNIA

4           ROBERT E. VENTURA,  
5                                 Plaintiff,

6                                 v.

7           DARREL ADAMS et al,  
8                                 Defendant.

Case Number: CV08-01708 SBA

**CERTIFICATE OF SERVICE**

9  
10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

11 That on July 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

14  
15 Robert Elias Ventura V-80485  
16 CSP - Corcoran State Prison  
P.O. Box 3476  
17 Corcoran, CA 93212-3476

18 Dated: July 17, 2008

Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk